

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

JUDITH HURT-WHITMIRE,	:	
GDC NO. 836510,	:	REMOVAL ACTION
Plaintiff,	:	28 U.S.C. § 1442;
	:	28 U.S.C. § 1443
v.	:	
	:	CIVIL ACTION NO.
STATE OF GEORGIA and	:	2:09-CV-0218-RWS
SUPERIOR COURT OF RABUN	:	
COUNTY,	:	
Defendants,	:	

ORDER AND OPINION

On January 4, 2010, Plaintiff’s motion for leave to file a second notice of removal of her state criminal case was denied. (Doc. 7.) On February 11, 2010, Plaintiff’s motion for reconsideration was denied. (Doc. 10.) On April 13, 2010, Plaintiff’s motion to set aside order for extraordinary circumstances was denied. (Doc. 18.) The matter is now before this Court on Plaintiff’s notice of appeal and a motion to appeal *in forma pauperis*. (Docs. 12 and 15.)

Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” An appeal is taken in good faith if, viewed objectively, the party “seeks appellate

review of any issue not frivolous.” *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Weeks v. Jones*, 100 F.3d 124, 126 (11th Cir. 1996).

In her motion for leave to file a second notice of removal, Plaintiff argued that, in addition to being employed by a private tax preparation company, she was a federal agent of the Internal Revenue Service (“IRS”). (Doc. 1 at 4.) Therefore, according to Plaintiff, she was immune from prosecution in state court for two counts of forgery and one count of theft by deception. (*Id.*)

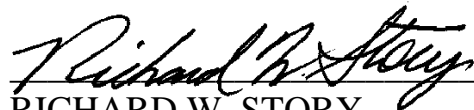
In dismissing this action, this Court relied, in part, on the decision of the United States Court of Appeals for the Eleventh Circuit when it affirmed this Court’s denial of Plaintiff’s first request to remove her state criminal case. *See Hurt-Whitmire v. Georgia*, Civil Action No. 2:08-CV-0224-RWS (N.D. Ga. Nov. 19, 2008), *aff’d*, 336 F. App’x 882 (11th Cir. July 7, 2009). The Eleventh Circuit concluded that Plaintiff’s employment with a private tax preparation company did not make her “a federal officer of the IRS or a person acting under an IRS officer.” *Hurt-Whitmire*, 336 F. App’x at 883. Therefore, Plaintiff was not entitled to have her state criminal case removed to federal court. *Id.* (Doc. 7 at 4.) This Court also concluded that Plaintiff’s several exhibits did not support her claim that she was

employed by the IRS. (Doc. 7 at 4; Doc. 9-2, exhibits; Doc. 11-2, exhibits; Doc. 18 at 3-4.)

Plaintiff's notice of appeal does not offer any argument or exhibit which suggests that this Court erred by relying on the decision of the Eleventh Circuit Court of Appeals or by concluding that her exhibits did not demonstrate that she was an employee of the IRS. Accordingly, this Court certifies that Plaintiff's appeal is not taken in good faith, and she should be denied leave to appeal as an indigent.

IT IS ORDERED that Plaintiff's motion to appeal *in forma pauperis* [Doc. 15] is **DENIED**.

IT IS SO ORDERED, this 20th day of April, 2010.



RICHARD W. STORY
UNITED STATES DISTRICT JUDGE